

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

FAO No. 151-M of 1996

Date of Decision : February 24, 2009

Sunil Kumar

..... Appellant

Versus

Neelam

..... Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Jasbir Rattan, Advocate
for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Harmanjit Singh, Advocate
for the respondent.

VINOD K. SHARMA, J.

Appellant-husband by way of the present appeal has challenged the judgment and decree passed by the learned Addl. District Judge, Kurukshetra dismissing his petition under Section 13 of the Hindu Marriage Act.

Appellant-petitioner filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce on the plea that the marriage between the parties was performed on 8.10.1989 according to Hindu rites and ceremonies at Ambala City.

After the marriage the parties resided at Pehowa, District Kurukshetra but the marriage was not consummated and, thus, no child was

born out of the wedlock. On the first night the respondent wife declared to the petitioner that her marriage with the petitioner was performed against her wishes and on account of threat of her father of committing suicide in case of her refusal to marry the appellant-petitioner.

It was also the case set up by the appellant-husband that respondent-wife claimed that she had waited for more than 40 years to marry a boy of her choice but her desire has not been fulfilled and, therefore, she would not permit the petitioner to consummate the marriage.

Appellant further claimed that respondent did not resume cohabitation with the appellant-petitioner. The appellant did not disclose this fact to his parents on the next morning and rather tried to persuade the respondent so that she should not create tensions and problem, and should behave like an Indian lady and to forget her past life. The respondent wife instead of mending herself, became arrogant, harsh and cruel to the petitioner as well as his family members. Thereafter father of the respondent was called and everything was made clear to him but nothing tangible came out. The appellant-petitioner was posted at Dhariwal, as an Inspector in Border Security Force, which was terrorist affected area and, therefore, he was granted one week's leave for the marriage and he on expiry of leave went back to his duty at Dhariwal. It is case of the appellant that the marriage was never consummated.

The respondent left the matrimonial home and went to her parents house at Ambala City. It was only on persuasion of father of the petitioner and other relations, who visited the house of respondent at

Ambala City, it was decided that the petitioner should keep the respondent at Dhariwal for a week and accordingly in the month of December, 1989 respondent went to Dhariwal where the petitioner was posted. The appellant-petitioner made arrangement for her stay in a house of some one but during her stay at Dhariwal also, the behaviour of the respondent remained the same. It is also allegation of the appellant-petitioner that he invited some officers of the B.S.F. to celebrate but respondent refused to attend the celebration which was a very humiliating for the appellant.

It is also the allegation that when appellant invited some of his colleagues the respondent refused to join them and slept in a room complaining of headache and this cruel act of the respondent forced the petitioner to spend sleepless nights. Even during her stay at Dhariwal she did not permit the appellant-petitioner to consummate the marriage as respondent gave threat that she would commit suicide if she was forced to live with him. Only after a week respondent forced him to drop her at Ambala City.

The appellant claimed that on persuasion of his parents he took one month's leave for the period 20.12.1989 to 20.1.1990 when father of the respondent brought her to Pehowa and advised the respondent to live like a pious lady but all in vain. On the first night during their stay at Pehowa during the vacations, the respondent wife wiped out her 'Sindoor' and 'Bindi' affixed on her forehead and broke all the bangles with a threat that ties of the marriage with the appellant-petitioner had been broken. The respondent did not allow the petitioner to touch her body with the same threat of

committing suicide. In view of the allegations made above, it was pleaded that the life of the appellant was turned into hell. The respondent stayed at Pehowa only for ten days during the leave of one month. He again reported for his duty on 20.1.1990.

The respondent-thereafter was again brought to Pehowa after a great persuasion by the father of the petitioner with the help of a Panchayat consisting of Durga Dass, Pawan Kumar and Surender Pal but the respondent again left the matrimonial home in the month of March, 1990 without permission of the father of the petitioner and she further made clear to the father of the petitioner that she should make arrangement for second marriage of the petitioner as she would not return to the matrimonial home. Thus, it was claimed that respondent deserted the appellant-petitioner since March, 1990 without any reasonable cause. Thus, divorce was sought on the ground of cruelty and desertion.

The petition was contested by the respondent-wife. In the written statement it was contended that appellant had no locus standi to maintain the petition. Further he was estopped from filing the present petition by his own act and conduct. It was also pleaded that appellant had concealed the true and material facts from the Court.

The respondent claimed that the marriage between the parties was arranged through matrimonial column in the newspaper after due verifications and satisfaction regarding the background and status of both the families. The marriage was performed in a traditional form with great pomp and show and sufficient dowry was given by the father of the

respondent. It was asserted that the marriage between the parties was consummated and the parties cohabited on the first night. The respondent on the next day of the marriage felt that parents of the petitioner were not happy with the dowry given by the parents of the respondent and their behaviour was not good towards the respondent because they started taunting the respondent.

After the marriage the appellant-petitioner stayed at Pehowa where they enjoyed all types of family life including physical relation between the two. It was further the case of the respondent that after the petitioner left Pehowa for his place of posting at Dhariwal, behaviour of the family of the petitioner was totally changed and they started misbehaving and insulting her and further declared that they have got no sufficient accommodation to keep the respondent at Pehowa and, therefore, they asked the respondent to bring a sum of Rs. 50,000/- so as to enable them to raise further construction. The respondent pleaded her helplessness which made behaviour of the parents of the appellant-petitioner to the respondent more rude. Brother of the respondent visited Pehowa to see her on 22.11.1989 and it was the parents of the appellant who sent the respondent with her brother and told her that she should not come back at her own and that when the petitioner would come, he will bring her to the matrimonial home.

In December, 1989 respondent went to Dhariwal i.e. the place of posting of appellant and stayed with him for ten days. During her stay at Dhariwal appellant assured her that he will try for a family station and would keep the respondent there and asked the respondent to wait for some

time more. She was left at Pehowa but the parents of the petitioner turned her out from matrimonial home in March, 1990 in three clothes.

The respondent claimed that she was ready and willing to go with the appellant and it was the appellant who deserted her on the ground that he was posted in sensitive area and a non-family station. He also gave false assertion that respondent would be kept with him whenever he would be posted at a family station.

On merit, it was pleaded that the appellant and respondent lived peaceful and happy life at Dhariwal and that the marriage has been consummated on the first night and further that both the husband and wife had physical relation on different occasion. Thus, it was prayed that the petition be dismissed.

In replication, the pleas raised in petition were reiterated and that of written statement were denied.

On the pleadings of the parties, the following issues were framed :-

1. *Whether the respondent, after solemnisation of marriage between the parties, treated the petitioner with cruelty. If so its effect ? OPP*
2. *Whether the respondent has deserted the petitioner since March, 1990, as alleged. If so its effect ? OPP*
3. *Whether the petitioner has no locus- standi to file the claim-petition ? OPR*
4. *Whether this Court has got no jurisdiction to maintain and try the petition ?OPR*

5. *Whether the petitioner is estopped from filing the petition by his own act and conduct ? OPR*
6. *Relief."*

Issues No. 1 & 2 were taken up together. In support of the plea the appellant appeared in the witness box as PW-1 and deposed that he was married with respondent on 8.10.1989 and that after the marriage the respondent was brought at Pehowa. On the first night, the respondent told him that she wanted to marry some other boy of her choice but her father forced her to marry to him. It was asserted that the marriage was not consummated. It was claimed that matter was told to his father 2-3 after the marriage when they went to the father of the respondent, who came to Pehowa and advised the respondent to cooperate with the appellant-petitioner. However, in spite of advice of her father there was no change in her behaviour. He also stated that he went to Dhariwal, his place of posting, after 2-3 days of marriage, where he remained under tension. In the second week of December, 1989 father of respondent dropped her at Dhariwal and thereafter the respondent stayed for 6-7 days in a quarter of his friend situated in the office of the Company. During her stay with him at Dhariwal, she did not attend to his friends and officers whom he invited for dinner. Similarly, she did not attend and join his other colleagues who visited the quarter. Thus, behaviour of respondent resulted in tension. The marriage was also not consummated at Dhariwal in view of the threat of suicide. The respondent was left at Pehowa, from where she went to her parents house at Ambala City. On 20.12.1989 he came to Pehowa on one month's leave and

the respondent also came there and stayed there for three days. During the vacations of one month, respondent usually came to Pehowa and went back to Ambala. It was also stated that on the first visit to Pehowa during his vacations, the respondent wiped out the 'Sindur' and broke bangles and threatened to commit suicide if he touched her. Even during her stay at Pehowa the marriage was not consummated. It was also stated that the wife used to quarrel with the appellant and his family members, which resulted in great mental and physical torture. The other averments in petition were also reiterated.

The appellant-petitioner further examined his father Tej Nath as PW-2, who deposed that after the celebration of the marriage between the parties, the respondent came to Pehowa and 2-3 days thereafter the appellant told him that the respondent had told to the petitioner that the marriage of respondent was performed against her wishes and that the respondent had threatened to commit suicide if he would touch her body. He stated that he went to father of the respondent and told about the incident on which father of the respondent accompanied him to Pehowa and made respondent understand the things. He also stated about the appellant-petitioner went back to place of his posting after six days as he had come on leave for ten days for the performance of marriage. He also deposed with respect to the attitude of the respondent during her stay with them. He also supported the appellant that the respondent wife stayed at Dhariwal for 6-7 days but she was brought back to Pehowa and during her stay at Dhariwal she had repeated the threat of suicide. The appellant went back to Dhariwal whereas

the respondent-wife left for her parental house at Ambala. He also supported the version of the appellant with regard to the conduct of the respondent during one month's leave of the appellant.

PW-3 Surender Sharma, brother-in-law of the appellant, deposed that on 3rd March, 1990, he accompanied by his father-in-law Tej Nath and Pawan Kumar visited the house of respondent at Ambala and discussed the matter with the father of the respondent. It was after persuasion that she was sent to Pehowa but she stayed there for only a period of one week and went back to her parents house.

On the other hand, the respondent wife appeared as RW-1 and deposed that after the marriage on 8.10.1999 she went to matrimonial home on 9.10.1989 and thereafter she lived with the petitioner as his wife and they cohabited as husband and wife. Even on 10.10.1989 they cohabited and it was on 11.10.1989 she along with the petitioner and two brothers-in-law of the appellant went to her parents house to perform *Phera* ceremony but returned to Pehowa on the same day after taking meals and thereafter they cohabited as husband and wife and their relations remained cordial. She asserted her allegation of demand of Rs. 50,000/- by the parents of the appellant for the purpose to construct a room. It was claimed that during her stay at Pehowa the parties remained happy and her father and sister also came at Pehowa on festivals like *Diwali* and *Karva-chauth* etc. She claimed to have stayed at Pehowa when her husband was away to duty at Dhariwal. On 22.11.1989 the brother of the respondent came to Pehowa to take her as her sister had delivered a son and on that occasion, she was told by her

mother-in-law that since there was shortage of accommodation with them, therefore, she should continue to stay at her parents house until her husband comes from the place of his posting. On 10.11.1987 Chander Shekhar, brother-in-law of the petitioner came to Ambala and told that she had been called by the petitioner at Dhariwal. On this she was first taken to Pehowa as her clothes etc. were at Pehowa and then she was taken at Dhariwal on 11.11.1989. She stayed at Dhariwal for ten days where she claimed that during her stay they lived peacefully and happily. She claimed that the appellant came to Pehowa along with her on one month's leave and then the appellant went to Tripura on training but she remained at Pehowa upto March, 1990. During her stay at Pehowa she wrote letters Ex. R-1 to Ex. R-3 to her parents. She further stated that on the suggestion of her father-in-law she wrote a letter to her parents for sending her certificates as her father-in-law had told that he would make efforts for her job. On 15.3.1990, she wrote a letter Ex. R-2 at the instance of her father-in-law and mother-in-law as they wanted to go out of station and she was asked to go to her parents house with some one. Her sister came to Pehowa on 17.3.1990 and she accompanied her to Ambala. It was on that occasion that she was informed by her in-laws that she could be called back when her husband would come to Pehowa. However, thereafter nobody has come to take her to matrimonial home. It is further stated in evidence that her father-in-law had met her sister at her office at Ambala and on that occasion her sister had asked him as to when she would be taken to her matrimonial home but she was informed that the appellant was posted at non-family station and whenever

he would come he would take the respondent. However, nobody turned to take her nor any message was received. The respondent stated that she was still ready to go to the matrimonial home and live with the appellant.

Sukh Versha RW-2, sister of respondent appeared in the witness box and stated that she was posted in the office of Home Guards, Haryana. She stated that she visited Pehowa at the matrimonial home of the respondent on so many occasions and even on the occasion of Phera ceremony. The respondent told her that she was happy at the matrimonial home and that the petitioner was also happy at that time. She only blamed about the behaviour of the mother of the petitioner. On *Karva-Chauth*, the mother-in-law of respondent did not come to see her. She further stated that when she visited Pehowa she found appellant to be in happy mood and she was even served tea. No complaint was made to her about the behaviour of the respondent. She has stated having gone to Pehowa on receipt of letter Ex.R-2 to bring respondent at Ambala as the parents of the appellant were to go out of station for 3-4 days. However, thereafter nobody turned up to take her back to the matrimonial home.

RW-3 Fakir Chand, father of the respondent, appeared in the witness box and supported the version of the respondent on material particulars.

RW-4 G.P.S. Grewal deposed that in the year 1991 the parents of the parties had come together to his office at Ambala to know about the place of posting of the appellant and also to make a request that she be taken to matrimonial home. However, the father of the appellant refused to take

her and even did not tell the particulars of the posting of the appellant.

RW-5 Anju Sudan, another sister of the respondent appeared in the witness box to depose that the parties were happy in the matrimonial life. She further claimed that the respondent had told about the consummation of marriage.

RW-6 Ramesh Kumar appeared in the witness box and deposed that he had gone to the house of the father of the appellant at Pehowa to give message about the death of uncle of the respondent.

The learned matrimonial Court on appreciation of evidence did not accept the version given by the appellant that the respondent has not allowed the consummation of marriage. The Court observed that in case the stand of the appellant was correct there was no occasion for the respondent to have gone to Dhariwal merely after two months of marriage. The Court also did not believe that though the parties stayed together in one room at Chariwal, the marriage was not consummated as untoward incident may not happen.

The learned matrimonial Court also observed that threat of suicide seems to be creation of appellant. The evidence, thus, was not believed.

The learned Court further observed that the parties lived in Chobara of Vinod Kumar Gupta, friend of the appellant, which is surrounded by other houses. The Court observed that neither Vinod Kumar Gupta nor any other person from the locality was produced to show that the relationship between the parties at Dhariwal were cordial or strained.

The learned Matrimonial Court did not believe the allegations that the respondent did not attend to his friends for want of corroboration from any other independent evidence. The Court observed that the appellant failed to examine any of his colleagues. The learned Court held that the material witnesses have been withheld by the appellant. The Court also held that as his statement suffered from inherent defect the same could not be believed to come to a conclusion that the respondent treated her with cruelty. The other part of the story of the respondent had claimed on the first night that she wanted to marry to another boy, was also disbelieved. The Court believed the evidence led by the respondent-wife. The Court did not believe the version of the father of the appellant as he had denied the factum of marriage having been performed through advertisement. The Court also observed that the evidence brought on record showed that the respondent and her father made efforts for rehabilitation of the parties. She was further said to have given detailed version that the parties cohabited at Pehowa and then at Dhariwal and also that they lived very happily.

The learned Court also discussed the documentary evidence brought on record and, thus, held that the appellant has failed to prove that respondent had treated him with cruelty or that the appellant had deserted the matrimonial home. The issues framed were decided against the appellant and the petition was dismissed.

Mr. Jasbir Rattan, learned counsel for the appellant referred to the statement of PW-1 i.e. the appellant to contend that the evidence on record showed that the respondent had not allowed the appellant to

consumate the marriage and this fact stood further proved from the statement of PW-2, his father and, therefore, the contention of the learned counsel for the appellant was that this act of the respondent amounted to cruelty.

The learned counsel for the appellant contended that cruelty can be both physical and mental. The learned counsel for the appellant also referred to the statement of PW-2 to contend that the real dispute between the parties was regarding age of Neelam which was wrongly shown less for the matrimonial alliance though she was older than the appellant. He further referred to the statement of other witnesses i.e. PW-3 and PW-4 and contended that the allegations made in the petition stood proved and, therefore, the finding of the learned matrimonial Court deserves to be set aside. He further referred to the statement of RW-1 to contend that if the evidence is read in totality it would show that the respondent was not happy with the status of the family of appellant and complained about the shortage of accommodation. The contention of the learned counsel for the appellant, therefore, was that if the evidence brought on record is seen in totality it would show that the appellant was treated with cruelty.

The learned counsel for the appellant referred to the judgment of Hon'ble Supreme Court in the case of ***Samar Ghosh Vs. Jaya Ghosh*** 2007(2) Civil Court cases 663 (S.C.) to contend that no uniform standard can ever be laid down which may prove mental cruelty. It is the totality of the circumstances and evidence brought on record that a view can be formed whether the person is treated with mental cruelty or not. The Hon'ble

Supreme Court in the case of ***Samar Ghosh Vs. Jaya Ghosh*** (supra) has been pleased to lay down as under :-

“85. No uniform standard can even be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the case of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) *On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come with the broad parameters of mental cruelty.*

(ii) *On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*

(iii) *Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of matter, indifference and neglect may reach such a degree that it makes the material life for the other spouse absolutely intolerable.*

(iv) *Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*

(v) *A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*

(vi) *Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*

(vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

(viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

(ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*

(x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour*

of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

The contention of the learned counsel for the appellant, therefore, was that admittedly there has been long period of continuous separation and, therefore, it could be presumed that the matrimonial bond is

beyond repair. The marriage, therefore, is merely fiction though supported by a legal tie and refusal to grant divorce does serve the sanctity of marriage but on the contrary leads to mental cruelty.

The learned counsel for the appellant thereafter placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Satish Sitole Vs. Ganga AIR 2008 SC 3093*** to contend that even if the husband has been unable to make out a ground for divorce but the facts show that the parties have been living separately for long period by making acrimonious allegations against each other then continuance of such marriage would itself amount to cruelty. In such situation the party would be entitle to divorce with adequate provision of alimony. The reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Naveen Kohli Vs. Neelu Kohli 2006(2) Civil Court cases 226 (S.C.)*** to contend that irretrievable breakdown of marriage has been recommended to be a ground for divorce. He also contends that it is not only the physical violence but conduct of spouse can also cause mental cruelty and torture.

Mr. Kanwaljit Singh, learned senior counsel appearing on behalf of the respondent supported the judgment and decree passed by the learned matrimonial Court primarily on the ground that the appellant cannot be allowed to take benefit of his own wrong. The contention of the learned senior counsel for the respondent was that the respondent has always been willing to accompany the appellant. He further referred to the documentary evidence placed on record by way of letters to contend that the respondent has been happily living in matrimonial home and it was the appellant and

his family members who did not want to keep her in matrimonial home. It is the contention that she has even not taken her dowry articles and Istri Dhan, which is still with the appellant.

The learned counsel for the respondent contended that the allegations levelled about the non-consummation of marriage are false and have been specifically denied by the respondent and there is no reason, whatsoever, to disbelieve her statement. It is also the contention of the learned senior counsel for the respondent that finding of fact has been recorded by the learned matrimonial Court on appreciation of evidence.

The learned counsel for the respondent further contended that the ground of act of cruelty are to be distinguished from ordinary wear and tear of family. The contention of the learned counsel for the respondent is that even if the contention of the learned counsel for the appellant believed to be true, cannot be said to be an act of cruelty. In support of his contention reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Savitri Pandey Vs. Prem Chandra Pandey AIR 2002 Supreme Court 591*.

The learned senior counsel for the respondent also referred to the judgment of the Delhi High Court in the case of *Narinder Singh Vs. Rekha @ Pushpa 2007(5) RCR (Civil) 727* to contend that wife refusing to serve tea to friends of her husband and family members, is no ground to seek divorce on the ground of cruelty.

The learned senior counsel for the respondent finally referred to the judgment of this Court in the case of *Gurdeep Singh alias Tota Singh*

Vs. Jaspal Kaur 2009(1)RCR (Civil) 593 to contend that irretrievable marriage is not a ground for grant of divorce under Section 13 of the Hindu Marriage Act.

On consideration of the matter, I find no force in the contentions raised by the learned counsel for the appellant. The judgment of the Hon'ble Supreme Court in the case of *Satish Sitole Vs. Ganga* (supra) is in exercise of Article 142 of the Constitution of India on the facts and circumstances of that particular case, therefore, it cannot be binding precedent to decide matrimonial cases. The appellant in view of the findings recorded by the learned matrimonial Court as also evidence brought on record has failed to prove cruelty or desertion. He cannot be allowed to take benefit of his own wrong in not settling respondent in matrimonial home. To claim divorce merely on the ground that the parties have been separately living for number of years cannot be a ground for divorce. The findings of the learned matrimonial Court do not call for any interference by this Court in this appeal.

Dismissed with no order as to costs.

February 24, 2009
'sp'

(VINOD K. SHARMA)
JUDGE